

EB-2017-0182
EB-2017-0194
EB-2017-0364

ONTARIO ENERGY BOARD

Upper Canada Transmission Inc. (on behalf of NextBridge Infrastructure)
Application for Leave to Construct an Electricity Transmission Line
between Thunder Bay and Wawa, Ontario

- and -

Hydro One Networks Inc.
Application to Upgrade Existing Transmission Station Facilities
In the Districts of Thunder Bay and Algoma, Ontario

- and -

Hydro One Networks Inc.
Application for Leave to Construct an Electricity Transmission Line
between Thunder Bay and Wawa, Ontario

FINAL SUBMISSION OF LONG LAKE #58 FIRST NATION

ABORIGINAL BUSINESS NETWORK

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Overview of the Process

1. The Ontario Energy Board (“OEB”) hearing of the Upper Canada Transmission Inc. (“NextBridge”) application for Leave to Construct the East West Tie (“EWT”), the Hydro One Networks Inc. (“HONI”) application to upgrade existing transmission station facilities and HONI’s application for Leave to Construct the Lake Superior Link (“LSL”) (“Combined Hearing”) is governed by the OEB’s statutory mandate under Sections 92 and 96 of the *Ontario Energy Board Act*.
2. The Combined Hearing took place on October 2,3,4,9,10,11,12 2018. Argument-in-Chief (“AIC) were submitted on October 22 2018 and intervenors were given the opportunity to file final submissions by October 31 2018.
3. Long Lake #58 First Nation (“LL#58FN”) participated in the Combined Hearing by submitting and reviewing evidence, filing interrogatories, attending the hearing and reviewing transcripts.¹
4. During the process leading up to, and including, the Combined Hearing, NextBridge, Hydro One and the Intervenors, including LL#58FN, have had the opportunity to listen, question and reflect on the evidence presented by NextBridge and HONI and to give consideration of that evidence in the context of the requirements of the *Ontario Energy Board Act*.
5. LL#58FN notes that the Ontario Ministry of Energy has been absent from the process and did not participate in any aspects of the Combined Hearing.
6. LL#58FN further notes that Parks Canada has been absent from most recent aspects of the public process and did not participate in any aspects of the Combined Hearing.

Evidence of the Parties

7. The priority for LL#58FN is the construction of the new 230 kilovolt transmission line that is required to meet the long-term needs of Ontarians, particularly those who reside in northwestern Ontario. While the proponents spent a considerable amount of time during the Combined Hearing denigrating each other’s position, LL#58FN remains focused on the opportunities that the new transmission line will provide to its community.

¹ Unless otherwise noted, all references in this submission are to EB-2017-0182

8. LL#58FN accepts that the Designation Process, on its surface, is not without peril to anyone selected to construct a transmission project in Ontario, and therefore it remains open until such time as the Leave to Construct decision has been rendered by the OEB.²
9. LL#58FN agrees with the evidence that the two projects are at different stages and that the proponents have different interpretations of the impact, cost and timeline of their respective projects, all of which must be carefully weighed by the OEB in making its final decision.
10. Both parties agree that the OEB should approve the Leave to Construct for the upgrades to transmission station facilities (the “Upgrades”) that are required to support either the EWT or LSL and LL#58FN supports their positions on the need for this approval.³
11. LL#58FN acknowledges the approach of the Ontario Ministry of the Environment, Conservation and Parks (“MECP”) delaying the approval of any environment assessment related to the Upgrades until such time as a decision has been made by the MECP on the NextBridge environmental assessment.
12. LL#58FN summarizes NextBridge’s key evidence as follows:
 - a. 90% design completion;
 - b. high cost certainty (Association for the Advancement of Cost Engineering (“AACE”) Class 2 estimate with a narrow accuracy band of +/- 10% and nearing an AACE Class 1 estimate standard);
 - c. 100% land acquisition ready;
 - d. complete environmental assessment and approval expected from MECP in Q1 2019;
 - e. field programs completed in support of the environmental assessment requirements and construction during 2018;
 - f. fully executed Engineering Procurement and Construction contract with Valard Construction for the completion of the EWT;
 - g. continuing target of a December 2020 in-service date;

² HONI Argument in Chief (“HONI AIC”) para. 13 at page 3

³ NextBridge Argument in Chief (“NB AIC”) para. 50 at page 18

- h. twenty percent (20%) equity participation by Bamkushwada LP (“BLP”); and
- i. willing to stand on their record of Indigenous engagement and accommodation and they believe they are in full compliance with the obligations agreed to under their Memorandum of Understanding between themselves and the Ontario Ministry of Energy (“MOE”).⁴

13. LL#58FN would summarize the key evidence of HONI as follows:

- a. The LSL offers a considerable opportunity for capital costs savings of over one hundred million dollars (\$100,000,000.00), which is derived from the position that they will have access to their corridor that runs through the Pukaskwa National Park;
- b. The LSL offers a considerable opportunity for annual operations and maintenance cost savings of two million four hundred thousand dollars (\$2,400,000.00) a savings delta that is based on their ability to use their existing operations and maintenance structure;
- c. lower long-term revenue requirements of thirteen million dollars (\$13,000,000.00) per year over the life of the LSL⁵;
- d. lower overall costs to be recovered from Uniform Transmission Rates;
- e. thirty-four percent participation to be offered to BLP;
- f. lower overall income tax requirements based on the additional fourteen percent ownership interest differential to be given to BLP;
- g. an unexecuted structured Engineering Procurement and Construction contract with SNC Lavalin that provides greater certainty for their project; and
- h. employment considerations beyond the construction phase of the Project.⁶

⁴ NB AIC para 4 and 6 at page 2, para 7 at page 3 and para 37 at page 12

⁵ Letter from Mr. Warren to the Ontario Energy Board dated October 30 2018.

⁶ HONI AIC para 6 at page 2, para 36 at page 10, para 55-56 at pages 16-17 and para 77 at page 22

14. LL#58FN summarizes the key differences between the parties as follows:

- a. the in-service date requirement;
- b. the ability to obtain approval from Parks Canada for the construction of the LSL;
- c. cost structures going forward, including costs related to future Indigenous participation;
- d. the applicability and usefulness of the NextBridge environmental assessment documents once they have been approved by MECP;
- e. HONI's ability to negotiate and obtain approval for substantive accommodation agreements including with BLP and other affected Indigenous groups;
- f. timing of key project milestones; and
- g. design and engineering standards.

15. On October 29, 2018, HONI filed additional information that suggests that the MECP has not accepted the environmental screening for the Wawa Transformer Station expansion and as a result of a request by Michipicoten First Nation has opted to have HONI complete a Class EA for this project. As such, HONI now suggests that the upgrades to the Wawa Transformer Station could be delayed until the end of December 2021.

Response of Long Lake #58 First Nation

16. LL#58FN notes the argument that the OEB has historically taken the position that it has no jurisdiction to deal with Indigenous consultation issues.⁷ LL#58FN contends that this position disregards recent decisions of various courts across Canada and ignores the economic value of accommodation potentially realized by any or all of the Indigenous groups who are participating in this process.

⁷ HONI AIC para.79 at page 23

17. LL#58FN has participated in NextBridge's EWT project since 2014. LL#58FN completed its initial work with NextBridge and provided NextBridge with a report that supported their efforts to construct the EWT.
18. LL#58FN has recently become involved, on a first meeting basis only, in HONI's LSL project. LL#58FN believes that its participation should be clarified in light of the Record of Consultation submitted by HONI. There is a fundamental difference between a Record of Consultation based on letter writing and notices and actual productive discussions between the parties.⁸
19. LL#58FN takes exception to the contention by HONI that considerations of Indigenous consultation have "clouded" the Combined Hearings.⁹
20. LL#58FN disagrees with the approach of MECP with respect to the environmental assessments for the Upgrades. While understanding the premise that the Upgrades form part of a larger project, LL#58FN believes that the entire northwestern Ontario grid will benefit from the Upgrades notwithstanding the project. As such, LL#58FN believes that the Upgrades should continue to be advanced as independent initiatives that have other benefits beyond either the EWT or LSL.¹⁰
21. LL#58FN contends that, in fairness to all parties, including the proponents, the OEB should require MECP to provide a detailed written explanation of their decision with respect to the environmental assessment requirements for the Wawa Transformer Station.
22. LL#58FN disagrees with HONI's characterization in their Argument-in-Chief that limiting commercial participation to the BLP will satisfy the accommodation requirements of LL#58FN.¹¹
23. LL#58FN disagrees with HONI's characterization in their Argument in Chief that there is "little to choose between HONI and NBI in terms of what the Indigenous communities have been offered".¹² LL#58FN submits that it has not been offered anything by HONI as of the date of this filing and it is still in negotiations with respect to the Capacity Funding Agreement.
24. LL#58FN believes that the absence of the MOE, and its obvious conclusion that its ability to delegate full responsibility for engagement and accommodation (the "Crown's Duty to

⁸ Exhibit I, Tab 1 Schedule 15, Attachment 1

⁹ HONI AIC para. 7 at page 2

¹⁰ Hearing Transcript Volume 7 at page 124

¹¹ HONI AIC para. 75 at page 22

¹² HONI AIC para. 82 at page 24

Consult”) absolves it of the need for participation in this process and the awarding of the Leave to Construct. That may be problematic in the short-term if any of the Indigenous interests take the position that the MOE has not fulfilled the Crown’s Duty to Consult and this could lead to additional delays after a decision has been reached by the OEB.

25. Given its ties to the Pic River as a historic travel route, LL#58FN would have liked to see more evidence from Parks Canada of its intentions with respect to HONI’s LSL proposal and would have liked to see how Parks Canada intends to manage all aspects of the work required for an environmental assessment through the Park. It is also important to understand how Parks Canada will be managing all aspects of construction through the park. Due to the absence of Parks Canada in these proceedings, however, LL#58FN continues to lack clarity on these issues.
26. LL#58FN has heard all of the discussion related to the technical aspects of this project and is confident that regardless of which proponent is selected by the OEB to construct this project it will be done in a manner that provides long-term benefits to the ratepayers of the Province of Ontario.
27. LL#58FN does not consent to the release of any of its information should HONI be granted access to NextBridge’s environmental assessment. LL#58FN takes the position that additional information must be gathered from the Elders and the LL#58FN membership to deal specifically with the LSL.

Conclusion

28. At this time LL#58FN is not providing direct support to either of the proponents but will continue to work with both proponents to ensure that LL#58FN’s interests are addressed.
29. LL#58FN respectfully requests that the OEB ensure it provides a quick response to the evidence that has been put forward and that its decision on the Leave to Construct applications for the EWT or LSL is provided no later than December 21 2018.